

**IN THE SUPREME COURT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

Jayalath Pedige Nimal Chandrasiri,  
Doraeba, Heeruwalpola.  
Plaintiff

**SC APPEAL NO: SC/APPEAL/89/2011**

**SC LA NO: SC/HCCA/LA/73/2011**

**HCCA KURUNAGALA NO: NWP/HCCA/KUR/130/2003(F)**

**DC KULIYAPITIYA NO: 10347/L**

Vs.

1. Karuna Pedige Seeti,  
Doraeba, Heeruwapola.
2. Jayalath Pedige Emalin,  
Thimbiriwewa, Bingiriya.
3. Jayalath Pedige Gnanawathie,  
Doraeba, Heeruwalpola.
4. Jayalath Pedige Karunawathie,  
Doraeba, Heerwalpola (Deceased).
- 4a. Jayalath Pedige Emalin,  
Thimbiriwewa, Bingiriya.
5. Jayalath Pedige Babynona,  
Doraeba, Heeruwalpola.
6. Karunapedige Dingiri alias Emalin,  
Temple Junction, Pahala, Kottaramulla,  
Kottaramulla.
7. Jayalath Pedige Hemalatha,  
Doraeba, Heeruwalpola.

8. Ranikiran Pedidurayalage Prasanna  
Piryashantha,  
Doraeba, Heeruwalpola.
9. Ranikiran Pedidurayalage Darshana  
Priyantha Ranjith,  
Doraeba, Heeruwalpola.
10. Rankiran Pedigedurayalage Simiyan  
Ranjith,  
Doraeba, Heeruwalpola.
11. Jayalath Pedidurayalage Hemalatha,  
Doraeba, Heeruwalpola.
12. Rankiran Pedidurayalage Jayasena,  
Doraeba, Heeruwalpola.

Defendants

13. Land Reform Commission, No. C82,  
Gregory's Avenue, Colombo 07.
14. Divisional Secretary, Udubaddawa,  
Divisional Secretariat, Udubaddawa.

Added-Defendants

AND BETWEEN

Land Reform Commission, No. C82,  
Gregory's Avenue, Colombo 07.

13<sup>th</sup> Defendant-Appellant

Vs.

Jayalath Pedige Nimal Chandrasiri,  
Doraeba, Heeruwalpola.

Plaintiff-Respondent

1. Karuna Pedige Seeti,  
Doraeba, Heeruwapola.
2. Jayalath Pedige Emalin,  
Thimbiriwewa, Bingiriya.
3. Jayalath Pedige Gnanawathie,  
Doraeba, Heeruwalpola.
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Doraeba, Heeruwalpola (Deceased).
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Doraeba, Heeruwalpola.
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Temple Junction, Pahala, Kottaramulla,  
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Doraeba, Heeruwalpola.
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Ranjith,  
Doraeba, Heeruwalpola.
11. Jayalath Pedidurayalage Hemalatha,  
Doraeba, Heeruwalpola.
12. Rankiran Pedidurayalage Jayasena,  
Doraeba, Heeruwalpola.

14. Divisional Secretary, Udubaddawa,  
Divisional Secretariat, Udubaddawa.  
Defendant-Respondents

AND NOW BETWEEN

Land Reform Commission, No. C82,  
Gregory's Avenue, Colombo 07.

13<sup>th</sup> Defendant-Appellant-Appellant

Vs.

Jayalath Pedige Nimal Chandrasiri,  
Doraeba, Heeruwalpola.

Plaintiff-Respondent-Respondent

1. Karuna Pedige Seeti,  
Doraeba, Heeruwapola.
2. Jayalath Pedige Emalin,  
Thimbiriwewa, Bingiriya.
3. Jayalath Pedige Gnanawathie,  
Doraeba, Heeruwalpola.
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Doraeba, Heeruwalpola (Deceased).
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Doraeba, Heeruwalpola.
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Temple Junction, Pahala,  
Kottaramulla,  
Kottaramulla.

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Piryashantha,  
Doraeba, Heeruwalpola.
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Priyantha Ranjith,  
Doraeba, Heeruwalpola.
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Ranjith,  
Doraeba, Heeruwalpola.
11. Jayalath Pedidurayalage Hemalatha,  
Doraeba, Heeruwalpola.
12. Rankiran Pedidurayalage Jayasena,  
Doraeba, Heeruwalpola.
14. Divisional Secretary, Udubaddawa,  
Divisional Secretariat, Udubaddawa.  
Defendant-Respondent-Respondents

Before: Vijith K. Malalgoda, P.C., J.

P. Padman Surasena, J.

Mahinda Samayawardhena, J.

Counsel: Dr. Sunil Coorey with Sudarshani Coorey and Rajeeka  
Perera for the 13<sup>th</sup> Defendant-Appellant-Appellant.

Ranil Samarasooriya with Shashiranga Sooriyapatabandi for  
the Plaintiff-Respondent-Respondent.

Nayomi Kahawila, S.C., for the 14<sup>th</sup> Respondent-Respondent.

Argued on : 11.11.2021

Written submissions:

by the 13<sup>th</sup> Defendant-Appellant-Appellant on 12.08.2011  
and 09.11.2022.

by the Plaintiff-Respondent-Respondent on 01.11.2011.

Decided on: 12.05.2023

Samayawardhena, J.

The plaintiff filed this action in the District Court of Kuliyaipitiya naming 10 defendants as parties to partition the land described in the schedule to the plaint among them. The 11<sup>th</sup>-14<sup>th</sup> defendants were added later. All the parties are members of the same family, except for the 13<sup>th</sup> defendant (Land Reform Commission) and the 14<sup>th</sup> defendant (Divisional Secretary of Udubaddawa). The 13<sup>th</sup> defendant filed a statement of claim seeking dismissal of the action on the basis that the land had been vested in the Land Reform Commission by operation of law and was conveyed to the 14<sup>th</sup> defendant. What the 13<sup>th</sup> defendant meant by alleging such conveyance is not clear. There is no deed of transfer or other document before Court to that effect.

At the trial, the Preliminary Plan was marked X and the 13<sup>th</sup> defendant's Plan 13V1. Both Plans were prepared by the same Court Commissioner and both were tendered by the plaintiff (page 153 of the brief). Both Plans depict parts of Final Village Plan No. 2022. The Preliminary Plan depicts a part of Lot 75 in Final Village Plan No. 2022 and Plan 13V1 depicts parts of Lot 235 in the same Final Village Plan. Lot 1 in Preliminary Plan X is Lot 1 in Plan 13V1. The extracts of Lots 52 and 75 in Final Village Plan No. 2022 were marked 7V3. The Court Commissioner was not called to give evidence by the plaintiff or defendants or Court.

It seems that the land depicted in the Preliminary Plan is State land/Land Reform Commission land. This is made clear from the evidence of the plaintiff. The plaintiff's pedigree commences from his father, namely Pina. The Plaintiff says his father was the original owner of the land but he does not know how his father obtained title to the land (page 162 of the brief). He also says his father did not live on the land. The defendants are the wife and seven children of Pina. Can a partition action be maintained on such a pedigree? In my view, it cannot.

At the trial, two deeds were marked. Deed No. 4260 dated 16.01.1992 (P1) executed two weeks before the institution of the partition action whereby the plaintiff's mother has transferred 1/7 share to the plaintiff, and deed No. 1929 dated 01.07.1991 (7V1) executed about seven months before the institution of the partition action whereby a sister of the plaintiff has transferred 1/7 share to her two children. Title is claimed on inheritance, not by prescription. This is perhaps because a claim of prescription requires adverse possession and the plaintiff would be required to identify the owner against whom he and his siblings maintained adverse possession. The deeds P1 and 7V1 have not been produced to the District Court and were not available in the case record when the District Judge wrote the judgment. The learned District Judge, without calling for the marked documents prior to writing the judgment, makes a bare reference only to the deed 7V1 and disregards that deed stating it was executed shortly before the institution of the action. There is no mention of P1. I find that those deeds have been produced to the High Court for the first time. The learned District Judge says the right of inheritance to the land by Pina and upon his death by his heirs, has not been disproved by the 13<sup>th</sup> and 14<sup>th</sup> defendants by acceptable evidence. But there is no proof that Pina was the owner of the land by inheritance in the first place.

කෙසේ වෙතත් පිනා නැමැත්තාට අයිතිය උරුමවීම සහ ඔහුගෙන් මෙම පාර්ශවකරුවන්ට අයිතිය මාරුවීම පිළිබඳව ඔප්පු කිසිවක් නොමැත. දැනට ඇති පැරණිම ඔප්පුව 7වි.1 ඔප්පුවයි. ඒ නඩුව ගොනු කිරීමට ඉතා සුළු කාලයකට පෙර ලියා සහතික කරන ලද්දකි. කෙසේ වෙතත් උරුමයෙන් පිනාට නඩුවට අදාළ දේපල උරුමවීමත්, පිනා මියයාමෙන් පසු ඔහුගේ උරුමකරුවන්ට දේපල උරුමවීමත්, 13 සහ 14 විත්තිකරුවන් පිළිගත හැකි සාක්ෂි මගින් බිඳ හෙලා නැත. (page 221 of the brief).

The District Judge has decided to partition the land on the basis that the 13<sup>th</sup> and 14<sup>th</sup> defendants did not lead evidence to contradict the evidence of the plaintiff. But counsel for the 13<sup>th</sup> defendant raised issues and cross-examined the witnesses.

On appeal, the High Court of Civil Appeal of Kurunagala dismissed the 13<sup>th</sup> defendant's appeal upholding the preliminary objection raised by counsel for the plaintiff and the 7<sup>th</sup> defendant that the 13<sup>th</sup> defendant has no *locus standi* to prefer an appeal against the judgment of the District Court in view the position taken by the 13<sup>th</sup> defendant in the statement of claim that the land subject to partition was vested in the 13<sup>th</sup> defendant and later transferred to the 14<sup>th</sup> defendant. The High Court did not consider the merits of the appeal.

The procedure adopted by the learned District Judge and the learned High Court Judge is completely obnoxious to the well-established principles of law governing partition actions. A partition trial is not an *inter partes* trial between the plaintiff on the one hand and the defendants on the other. It is an action *in rem*. The decree entered in a partition action binds not only parties to the action but also non-parties who may have had interests in the land. For practical purposes, there are no permanent plaintiffs and defendants in a partition case in that all parties play a dual role of plaintiff and defendant at different stages of the case. *Vide inter alia* sections 19(2) and 70 of the Partition Law, No. 21 of 1977.



The defendant today can be the plaintiff tomorrow to prosecute the partition action to a finality. The judgment in a partition action is the collective effort of the plaintiffs, the defendants and the District Judge. Hence there is a special sanctity attached to a partition decree.

However, this does not mean that in a partition action the burden is on the District Judge to successfully prosecute the case on behalf of the parties whilst the parties take no interest in the case. There is no such obligation. The District Judge need not go after the parties pleading with them in earnest for help to identify the land and then investigate title to the land. *Vide Priyanthi v. Gamage Uma* (SC/APPEAL/2/2019, SC Minutes of 15.10.2021). Having emphasised this in no uncertain terms, I must also underscore that the overall duty cast upon the District Judge in hearing a partition action is greater than in an ordinary civil action.

Section 25(1) of the Partition Law reads as follows:

*On the date fixed for the trial of a partition action or on any other date to which the trial may be postponed or adjourned, the court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all questions of law and fact arising in that action in regard to the right, share, or interest of each party to, of, or in the land to which the action relates, and shall consider and decide which of the orders mentioned in section 26 should be made.*

This section mandates a District Judge trying a partition action to examine the title of each party to the land to be partitioned. He must do this quite independently of what the parties may or may not say. This is the fundamental difference between the duty of a Judge trying a partition action and any other civil action. This is because of the binding nature of partition actions as actions *in rem*.

The duty of the Judge is not perfunctory. A District Judge trying a partition action cannot be found fault with for being overly cautious or jealous in investigating title to the land and looking beyond what has been presented before the Court by way of pleadings, evidence or otherwise, in order to be absolutely satisfied *inter alia* that all the necessary parties are before Court and there is no collusion among the parties. This paramount duty cast upon the District Judge in partition actions has been repeatedly stressed by the superior Courts from time immemorial.

In *Peris v. Perera* decided 123 years ago and reported in (1896) 1 NLR 362, the Full Bench of the Supreme Court presided over by Chief Justice Bonser held:

*The Court should not regard a partition suit as one to be decided merely on issues raised by and between the parties, and it ought not to make a decree, unless it is perfectly satisfied that the persons in whose favour the decree is asked for are entitled to the property sought to be partitioned.*

The Full Bench of the Supreme Court presided over by Chief Justice Layard in the case of *Mather v. Tamotharam Pillai* 6 NLR 246, decided as far back as in 1908, held:

*A partition suit is not a mere proceeding inter partes to be settled of consent, or by the opinion of the Court upon such points as they choose to submit to it in the shape of issues. It is a matter in which the Court must satisfy itself that the plaintiff has made out his title, and unless he makes out his title his suit for partition must be dismissed.*

*In partition proceedings the paramount duty is cast by the Ordinance upon the District Judge himself to ascertain who are the actual*

owners of the land. As collusion between the parties is always possible, and as they get their title from the decree of the Court, which is made good and conclusive as against the world, no loopholes should be allowed for avoiding the performance of the duty so cast upon the Judge.

In *Juliana Hamine v. Don Thomas* (1957) 59 NLR 546 at 549, L.W de Silva A.J. observed:

*A partition decree cannot be the subject of a private arrangement between parties on matters of title which the Court is bound by law to examine. While it is indeed essential for parties to a partition action to state to the Court the points of contest inter se and to obtain a determination on them, the obligations of the Court are not discharged unless the provisions of section 25 of the Act are complied with quite independently of what parties may or may not do.*

This has been consistently followed up to now. (*Vide* for instance: *Gooneratne v. Bishop of Colombo* (1931) 32 NLR 337, *Cooray v. Wijesuriya* (1958) 62 NLR 158, *Gunathillake v. Muriel Silva* (1974) 79(1) NLR 481, *Gnanapandithen v. Balanayagam* [1998] 1 Sri LR 391, *Piyaseeli v. Mendis* [2003] 3 Sri LR 273, *Sumanawathie v. Andreas* [2003] 3 Sri LR 324, *Somasiri v. Faleela* [2005] 2 Sri LR 121, *Basnayake v. Peter* [2005] 3 Sri LR 197, *Karunaratne Banda v. Dassanayake* [2006] 2 Sri LR 87, *Silva v. Dayaratne* [2008] BLR 284, *Abeyasinghe v. Kumarasinghe* [2008] BLR 300, *Sopinona v. Pitipanaarachchi* [2010] 1 Sri LR 87.)

In *Cynthia de Alwis v. Marjorie D'Alwis* [1997] 3 Sri LR 113, F.N.D. Jayasuriya J. remarked:

*A District Judge trying a partition action is under a sacred duty to investigate into title on all material that is forthcoming at the*

*commencement of the trial. In the exercise of this sacred duty to investigate title a trial Judge cannot be found fault with for being too careful in his investigation. **He has every right even to call for evidence after the parties have closed their cases.***

In the case of *Godagampala v. Peter Fernando* [2016] BLR 139 at 140, Chithrasiri J. held:

*It is trite law that the examination of such title of the parties in a partition action is the duty of the trial judge though we follow the adversarial system in this jurisdiction.*

In *Wijesundera v. Herath Appuhamy* (1964) 67 CLW 63 at 64, T.S. Fernando J. stated:

*Presence or absence of Counsel makes no difference to the duty of the learned trial judge to examine both oral and documentary evidence in a partition case to satisfy himself on the question of title.*

In the instant case, it is manifest that both the District Court and the High Court failed to appreciate the special duty cast upon the District Judge in a partition case. If the plaintiff's pedigree is *ex facie* incomplete or unacceptable or doubtful, the District Judge shall not enter judgment merely because the supposed contesting parties did not vigorously challenge the evidence of the plaintiff. The general principle that uncontroverted evidence is regarded as admitted (*vide Edrick de Silva v. Chandradasa de Silva* (1967) 70 NLR 169 at 174) is inapplicable in partition actions.

In my considered view, the plaintiff has not unfolded a proper pedigree acceptable to Court in order for the Court to enter a partition decree. Although in a partition case the plaintiff need not and in fact cannot start the pedigree from the very first owner, as it is well-nigh impossible, the

plaintiff certainly cannot start the pedigree from his father as the original owner.

I hold that there is no proper investigation of title. The judgment of the District Court cannot be allowed to stand. I set aside the judgments of the District Court and the High Court and allow the appeal but without costs. The plaintiff's action shall stand dismissed.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court